

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,)
Plaintiff,)
v.)
MELVIN SKINNER,)
SAMUEL SKINNER, and)
FRANK LOGAN ASBURY,)
Defendants.)
)

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the District Court as may be appropriate. This matter came before the Court on January 3, 2007, for a hearing on all pending motions. David Jennings and Hugh Ward, Assistant United States Attorneys, were present for the government. Attorneys Ralph Harwell and Tracy Smith were present representing Defendant Melvin Skinner, and Attorney Michael McGovern was present representing Defendant Samuel Skinner. Defendants Melvin Skinner and Samuel Skinner were also present.

Prior to the hearing, Attorney Harwell made an oral motion to continue the hearing pursuant to Rule 16(d)(2) of the Federal Rules of Criminal Procedure and for leave to file further motions. Movant alleged the government made a late disclosure of relevant discovery, in violation of the Scheduling Order [Doc. 10]. Movant alleged the government faxed over a document, which is attached as Defendant's Collective Exhibit 1, containing the Application of the United States of America and an accompanying affidavit, on January 2, 2007, the day before this hearing. This

application was in reference to a phone with the number of (520) 869-6820. It was docketed as 3:06-MJ-2082, and a subsequent order (“2082 Order”) was issued on July 13, 2006. Both the order and the application were sealed. Movant noted that Defendant’s pending Motion to Suppress [Docs. 34, 35] is in reference to an order (“2079 Order”), docketed as 3:06-MJ-2079 and entered on July 12, 2006, allowing for a pen register and trap and trace device on the telephone numbered (520) 869-6447. The 2079 Order was Ordered unsealed on October 13, 2006. [Doc. 41]. The government responded [Docs. 39, 44] to Defendant’s Motion to Suppress [Docs. 34, 35] on October 19 and 24, 2006. In its response [Doc. 39], the government’s facts revolved around the phone numbered (520) 869-6447.

The government’s late filed discovery [Ex. 1 to this Memorandum and Order] demonstrates that two phones were at issue, and two orders were entered. The 2079 Order was unsealed, whereas the 2082 Order remained sealed. Defendants were not made aware of the existence of the 2082 Order pertaining to the phone numbered (520) 869-6820 until the day before the hearing. Defendants’ sole indicia of evidence pertaining to the phone numbered (520) 869-6820 is attached hereto as Exhibit 2.

The government stated, and the Court finds that the late disclosure of Exhibit 1 was inadvertent. This Court further finds that the 2079 Order and the 2082 Order pertain to different telephones. Additionally, the applications submitted rely upon different legal bases, differing in form and substance. Further, it appears the actual phone number and order at issue is the 2082 Order, not the 2079 Order. As the government inadvertently failed to disclose relevant discovery to Defendants until the day before the hearing, this Court finds that justice requires this hearing to be re-set. Accordingly, Defendant’s oral motion to continue the hearing is **GRANTED**.

To allow counsel to amend motions to account for the newly discovered legal bases and facts, this Court finds good cause to extend the time for filing motions, and **GRANTS** Defendants' oral motion for leave to file further motions. Defendants may file motions and supplements to pending motions up to and including January 17, 2007. The government may file responses and supplements to presently pending motions up to and including January 31, 2007. As this Court informed counsel at the hearing, in the event that only a few changes are needed, a supplement or errata sheet will suffice to amend the presently pending motions. The hearing is rescheduled for **February 13, 2007 at 9:00 a.m.**, before the undersigned.

Upon the motion of the government and for good cause shown, the order, dated July 13, 2006, which pertained to telephone number (520) 869-6820 and docketed as 3:06-MJ-2082, and the application and any affidavits filed in support of said order are hereby **UNSEALED**.

Accordingly, it is **ORDERED**:

1. Defendant's oral motion to continue the hearing is **GRANTED**;
2. Defendants' oral motion for leave to file further motions is **GRANTED**;
3. Defendants may file motions and supplements, as outlined above, up to and including January 17, 2007;
4. The government may file responses or supplements, as outlined above, up to and including January 31, 2007;
5. The hearing is re-set for **February 13, 2007 at 9:00 a.m.**, before the undersigned; and
6. The sealed order, dated July 13, 2006 and docketed as **3:06-MJ-2082**, and the accompanying application and any affidavits are **UNSEALED**; and

7. This Memorandum and Order is to be entered with Defendant's Exhibits 1 and 2 attached as part of the record.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge